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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4040/2024, CM APPL. 16507/2024 & CM APPL.
16616/2024
SMT. VIMLA SHARMA & ORS. Petitioners

Through: Mr. R. Venkataraman, Advocate
Mob: 9910090030
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versus

M/S CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LTD & ANR. Respondents

Through: Mr. Sidharth Chopra and Mr. Navneet
Thakran, Advocate for R-1.
Mob: 9650570765
Email:
lawofficessidharthchopra@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
% **18.03.2024**

CM APPL. 16616/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 4040/2024 & CM APPL. 16507/2024

3. The present writ petition has been filed by the petitioner *interalia* for setting aside the notice of sale of immovable property dated 12th February, 2021.
4. Learned counsel appearing for the petitioner submits that the respondent has initiated proceedings under the Securitization and



Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) without issuing the mandatory notice under Section 13(2) of the SARFAESI Act. He further submits that the account of the petitioner has not been declared as Non Performing Asset (“NPA”) and that the action by respondent is sought to be taken with respect to property bearing no. 5/79, Gajjukatra, Bada Bazar S.O. Shahdra, Delhi, which is not a mortgaged property with the respondent. Thus, he submits that appropriate direction be issued to the respondent.

5. Learned counsel appearing for the petitioner further submits that the respondent is a company which is registered under the Companies Act. Therefore, he submits that the respondent no. 1 cannot initiate any proceedings under the SARFAESI Act.

6. Per contra, learned counsel appearing for respondent no. 1 disputes this contention. He relies upon judgment passed by the Coordinate Bench of this Court in the case of ***Diamond Entertainment Technologies Pvt. Ltd., through its Director and Others Versus Religare Finvest Limited, through its Authorized Officer Mr. Lokesh Kumar Mittal***, 2023 SCC OnLine Del 4905 and refers to the following paragraphs:

“xxx xxx xxx

41. It is, thus, clear that in the instant case, the respondent by virtue of being an NBFC, which is not satisfactorily shown by the petitioners to be involved in discharging public functions, would not fall in the classification of ‘instrumentality’ or ‘agency’ of State or ‘any other authority’ discharging public functions. It is, therefore, concluded that the doors for exercising writ jurisdiction cannot be opened for the petitioners within the narrow scope of judicial review under Article 226 of the Constitution of India qua the NBFC and their action under the provisions of the SARFAESI Act.

42. A pragmatic analysis of the nature of transaction between the parties in the instant case would suggest that the petitioners had



established a privity with the respondent vide loan agreement with an intention to reap monetary benefits. The said transaction does not involve any public element rather it seems to be a private affair between the two private parties based upon monetary consideration. It is, therefore, inappropriate for the petitioners to seek a public law remedy under Article 226 of the Constitution in pursuance of a private transaction between the two parties which does not have any ramifications for the public at large.

.....

44. It is, thus, seen that for the same reasons the interference in the interregnum i.e., between the order passed by the learned CMM as per Section 14 of the SARFAESI Act and the measures being taken under Section 13(4) of the SARFAESI Act, the interference is not warranted.

45. The main thrust of the petitioners that in the absence of any adjudicatory mechanism to ventilate their grievance before the possession of the secured interest is taken over either symbolically or physically, a legal void is created which needs to be redressed on the anvils of necessary judicial intervention under writ jurisdiction, is not correct. The remedy, in any case, would lie under Section 17, once the measures under Section 13(4) or Section 14 of the SARFAESI Act are taken.

xxx xxx xxx”

7. Learned counsel appearing for respondent no. 1 submits that the earlier proceedings that were initiated on the basis of notice dated 20th March, 2020, have already been withdrawn.

8. He further draws the attention of this Court to Para 27 of the petition wherein the prayers made by the petitioner in *S.A No. 79/2021* (New no.- *TSA No. 356/2022*), which is pending before the learned Debt Recovery Tribunal (“DRT”) have been made. By referring to the said prayers, it is submitted that the prayer made in the present case are the same prayers, which have been made before the learned DRT and that the same issue is pending before the learned DRT in *S.A No. 79/2021* (New no.- *TSA No. 356/2022*).



9. Learned counsel further disputes the fact that the property bearing no. 5/79, Gajjukatra, Bada Bazar S.O. Shahdra, Delhi is not a mortgaged property. He draws the attention of this Court to the table as given in Para 12 of the petition, which is reproduced as under:-

“xxx xxx xxx

12. Based on the said request of Respondent No. 1, the Petitioners had applied for the said loan for an amount of Rs. 66 Lakh were granted on 31.01.2019. However, the Respondent No. 1 agreed to liquidate the earlier loan amount and also to liquidate the loan amount issued by DCB Bank of Rs. 20 lakh. The Respondent No. 1 had issued BT loan and adjusted the loan amount issued by Respondent (FI) and also DCB loan amount against the BT loan and adjusted as follows:-

<i>Nature of loan</i>	<i>Issued the loan by FI/Bank</i>	<i>Deposited of title deed of property</i>	<i>Year of the loan</i>	<i>Loan Amount</i>
<i>Loan Against property</i>	<i>Cholamandalam Investment and Finance Co. Ltd.</i>	<i>5/79, Gajjukatra, Bada Bazar S.O, Shahdra, Delhi</i>	<i>31.03.2015</i>	<i>Rs. 33,00,000/-</i>
<i>Loan Against Property</i>	<i>Cholamandalam Investment and Finance Co. Ltd.</i>	<i>5/79, Gajjukatra, Bada Bazar S.O, Shahdra, Delhi</i>	<i>29.02.2016</i>	<i>Rs. 13,00,000/-</i>
<i>Loan against Property</i>	<i>Cholamandalam Investment and Finance Co. Ltd.</i>	<i>5/78, Gajjukatra, Bada Bazar S.O, Shahdra, Delhi</i>	<i>January 2019</i>	<i>Rs. 20,00,000/-</i>

xxx xxx xxx”

10. By reference to the aforesaid table, it is submitted that property no. 5/78, Gajjukatra, Bada Bazar S.O., Shahdra, Delhi is a mortgaged property.

11. Learned counsel further submits that proceedings under Section 14 of the SARFAESI Act have been initiated by the respondent on the basis of a fresh notice dated 5th June, 2023. Thus, he submits that the petitioner has



still not challenged the said notice. He further submits that the earlier petition filed by the petitioner before the learned DRT, i.e., S.A No. 79/2021 (New no.-TSA No. 356/2022) has become infructuous, since the respondent is not proceeding on the basis of the earlier notice of 20th March, 2020, which already stands withdrawn.

12. I have heard learned counsel for the parties and perused the record.

13. The present petition has been filed with the following prayers:

“xxx xxx xxx

(i) issue a writ of certiorari/mandamus or any other appropriate writ/order/direction and Set aside the Notice of Sale of Immovable Property to borrower under rules 8(6) of the Secured Interest (Enforcement) Rules, 2002 (Rule 8 & 9) dated 12.02.2021 of the property bearing No. 5/78 & 5/79, Gajjukatra, Bada Bazar S.O. Shahdra, Delhi; (Notice 12.02.2021 not received by the Petitioners);

(ii) Direct the Respondent No. 1 to proceed only with mortgage property i.e., bearing no. 5/78 Gajjukatra, Bada Bazar S.O. Shahdra, Delhi area measuring 33.61 sq. yards and to publish fresh sale notice with mentioning only mortgage property bearing no. 5/78 Gajjukatra, Bada bazar S.O. Shahdra Delhi area measuring 33.61 yards;

(iii) Direct the Respondent for not taking the possession of the other property i.e., bearing no. 5/79 Gajjukatra, Bada Bazar S.O. Shahdra, Delhi area measuring 80 sq. yards approx;

(iv) Direct the Respondent to give the moratorium facility and waiving of interest with other charges facility to the petitioners in respect of the aforesaid loan;

xxx xxx xxx”

14. This Court notes the prayers made by the petitioner in S.A No. 79/2021 (New no.-TSA No. 356/2022) which is pending before the learned DRT, which read as under:

“xxx xxx xxx

a. Set aside the Notice of Safe of Immovable Property to borrower under rules 8(6) of the Secured Interest (Enforcement) Rules, 2002 (Rule 8 & 9) dated 12.02.2021 of the property bearing No. 5/78 & 5/79, Gajjukatra, Bada Sazar S.O. Shahdra, Delhi.



b. May direct to FI for proceed only with mortgage property i.e. bearing no. 5/78 Gajjukatra, Bada Bazar S.O. Shahdra, Delhi area measuring 33.61 sq. yards, .

c. May direct to FI to publish fresh sale notice with mentioning only mortgage property bearing no. 5/78 Gajjukatra, Bada Bazar S.O. Shahdra, Delhi area measuring 33.61 sq. yards.

d. direct to FI for not took the possession of the other property i.e. bearing no. 5/79 Gajjukatra, Bada Bazar S.O. Shahdra, Delhi area measuring 80 sq. yards approx.

e. direct the FI to restructure the applicants loan with waiving the interest in the view of the national pandemic.

f. Direct the FI to give the moratorium facility and waiving of interest with other charges facility to the applicants in respect of the aforesaid loan.

g. direct to FI for not create any hindrances in respect of the other property i.e. bearing no. 5/79 Gajjukatra, Bada Bazar S.O. Shahdra, Delhi area measuring 80 sq. yards approx because of dwelling house of the applicants.

h. Please to direct the respondent (FI) to regularize the said BT Loan as per law under the RBI Guidelines.

xxx xxx xxx”

15. Perusal of the aforesaid shows that the prayers which are sought in the present petition are similar to the prayers which are sought by the petitioner in S.A No. 79/2021 (New no.-TSA No. 356/2022), pending before the learned DRT.

16. This Court also notes the submission made by learned counsel for the respondent that the proceedings which have now been initiated by respondent no. 1 under the SARFAESI Act are pursuant to the notice under Section 13(2) of the SARFAESI Act dated 5th June, 2023, which have not been challenged by the petitioner before the learned DRT till date.

17. This Court also notes the submission made by learned counsel for the respondent that no possession notice has been issued in the proceedings initiated by the respondent no. 1 under Section 14 of the SARFAESI Act.



18. Considering the aforesaid, liberty is granted to the petitioner to take appropriate proceedings in accordance with law, by either amending the earlier petition, i.e., *S.A No. 79/2021* (New no.- *TSA No. 356/2022*) pending before the learned DRT filed on behalf of the petitioner herein or, by filing fresh proceedings before the learned DRT challenging the demand notice dated 5th June, 2023 under Section 13(2) of the SARFAESI Act, issued by respondent no. 1.

19. At this stage, learned counsel appearing for the petitioner submits that the petitioner has still not received a copy of the notice dated 5th June, 2023 issued by respondent no. 1 under Section 13(2) of the SARFAESI Act, which fact is disputed by learned counsel appearing for the respondent no. 1. However, he submits that he shall provide a fresh copy to the petitioner.

20. Let copy of the notice dated 5th June, 2023 issued by the respondent no. 1 be supplied to learned counsel for the petitioner on the E-mail which is reflected in today's order.

21. With the aforesaid directions, the present petition is disposed along with the pending applications.

MINI PUSHKARNA, J

MARCH 18, 2024/ak